

APR 22 1992

MEMORANDUM

SUBJECT: Postponement of Enforcement Action During NSPS Review

FROM: Kathleen M. Bennett
Assistant Administrator for Air, Noise and Radiation *(Signed)*TO: Directors, Air & Waste Management Divisions
Regions I-IV, VI-VIII, XDirectors, Air Management Divisions
Regions V and IX

This memorandum is in response to a request from Region IV asking for clarification of the Agency's policy on enforcement during a review or challenge of a promulgated NSPS or test method.

During the period of judicial, administrative or internal agency review, a standard or test method remains in effect and enforceable. Any change in a promulgated standard or test method can only be accomplished through rulemaking procedures. There may be a point, however, where it is necessary for the Agency to delay an enforcement proceeding.

Unfortunately, every dispute over an NSPS or test method will have unique circumstances, so specific criteria for deferring enforcement are not generally available. Factors such as the nature and scope of the challenge or review, the likelihood of changes to the regulation, and whether any irreparable injury would occur by proceeding or failing to proceed with enforcing the current regulations should be considered on a case-by-case basis. In general, deferral should be considered only where the standard or method is likely to be changed and significant expense would be incurred in meeting the existing regulations which would not likely be required under the revised regulations. Let me reiterate that the mere existence of a challenge or review is not in itself a reason for deferring enforcement.

Any questions regarding this memo or implementation of its content should be directed to Ed Reich, Director, DSSE at 382-2807.

FEB 25 1998

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CONCURRENCES

1-341	4N341						
1-341	1-341	1-341	1-341	1-341	1-341	1-341	1-341
4/16/82	4/16/82	4/16/82	4/16/82	4/19	4/13	4/15	

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